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**Recht, Sicherheit und Verwaltung
in internationaler Perspektive**
**Law, Security and Public Administration
in an International Perspective**

5

Oesten Baller / Burkhard Breig (Hrsg.)

Justiz in Mittel- und Osteuropa

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Vorwort

Eine unabhängige und funktionsfähige Justiz ist eine unverzichtbare Voraussetzung nicht nur für einen demokratischen Rechtsstaat, sondern auch für eine stabile wirtschaftliche Entwicklung. Funktionsfähig ist eine Justiz, wenn es einen den unterschiedlichen Verfahrensarten entsprechenden Gerichtsaufbau und klar abgegrenzte Verfahrensgesetze gibt, wenn ein professioneller Richterstand vorhanden ist und wenn eine Mindestausstattung der Gerichte gewährleistet ist. Unabhängig ist eine von politischer Beeinflussung freie Justiz, die auch selbst integer ist, also frei von Korruption und Ämterpatronage. Und eine weitere wichtige Voraussetzung ist, dass die Rechtskultur in einem Land gut entwickelt ist und die allgemeine politische Kultur soweit entwickelt ist, dass ein Grundvertrauen in die Gerichte vorhanden ist und Gerichte als **die** Instanz der Streitbelegung bei den unterschiedlichsten rechtlichen Konflikten akzeptiert sind.

In den beiden größten Ländern im postsowjetischen Raum, in Russland und der Ukraine, ist es noch ein weiter Weg hin zu einer unabhängigen Justiz, gerade wenn man die gerichtliche Kontrolle des Präsidenten, der Regierung und der Verwaltung in den Blick nimmt. Aber auch in Ungarn und Polen, Mitglieder der Europäischen Union seit 2004, ist die Justiz, vor allem die Verfassungsjustiz, auf Grund zunehmenden politischen Drucks in ihrer Unabhängigkeit bedroht. Auf der Fachtagung „Recht der Deutschen Gesellschaft für Osteuropakunde“, die gemeinsam von den Osteuropa-Instituten der Hochschule für Wirtschaft und Recht Berlin (HWR), der Freien Universität Berlin und der Hochschule Wismar an der HWR veranstaltet wurde, diskutierten Rechtswissenschaftlerinnen und Rechtswissenschaftler aus diesen Ländern sowie aus Deutschland und aus Israel in sechs Panels unterschiedliche Fragen des Zustands und der Entwicklung der Justiz, primär in den Ländern Russland, Ukraine, Polen und Ungarn. Die Beiträge, die in diesem Band versammelt sind, gehen auf die Präsentationen in den Panels zurück, allerdings folgt ihre Anordnung nicht zwangsläufig dem Ablauf der Tagung.

Shimon Shetreet betrachtet im Eingangsbeitrag zunächst die Lustration in der Ukraine unter dem Blickwinkel der „Mount Scopus International Standards of Judicial Independence“ und stellt die Vorgänge in der Ukraine in einen größeren historischen und rechtsvergleichenden Kontext. Vergleiche zieht er zu Russland, Ungarn, England, Ägypten, den USA und Israel, und arbeitet das Spannungsverhältnis heraus, in dem Lustration sich bewegt: Sie strebt an, das Vertrauen in richterliche Unabhängigkeit zu erhöhen, indem Personen, die sich durch Mangel an Unabhängigkeit kompromittiert haben, aus dem Amt entfernt werden, gefährdet aber möglicherweise gerade durch einen solchen Eingriff die langfristige Kultur der Unabhängigkeit der Richter.

Zwei Beiträge behandeln einen Aspekt der Justizreformen in der Ukraine, nämlich die beiden „Lustrationsgesetze" von 2014, mit denen (u. a.) gegen Richter vorgegangen werden sollte, die sich vor dem Verfassungsumsturz 2014 Menschenrechtsverletzungen zuschulden haben kommen lassen. *Liudmyla Savanets* stellt den Inhalt der beiden Gesetze dar und stellt u. a. heraus, dass beide Gesetze in vielerlei Hinsicht nicht der Verfassung genügen. *Caroline von Gall* geht vor allem auf die Anforderungen ein, die die EMRK nach der recht umfangreichen Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte für Lustration vorsieht. Was in der Ukraine auf den ersten Blick als hoffnungsvoller Aufbruch nach dem Verfassungsumbruch nach Februar 2014 aussah, stellt sich bei näherer Betrachtung als enttäuschend heraus, so das Fazit des Beitrags. Beide Lustrationsgesetze genügten den Anforderungen der EMRK und der ukrainischen Verfassung in vielerlei Hinsicht nicht. Erst 2016 konnte eine überfällige Verfassungsreform verabschiedet werden. In einem weiteren Beitrag zur Ukraine betrachtet *Ielyzaveta Lvova* die Entwicklung der Verwaltungsgerichtsbarkeit in der Ukraine auf der Grundlage der Reformgesetze der Ukraine und der justizbezogenen Verfassungsreform von 2016. Hierbei geht sie auch auf den Einfluss der neuen reformorientierten Verwaltungsgesetze auf die bestehende Verwaltungsgerichtsbarkeit ein und betont die Notwendigkeit einer funktionierenden Verwaltungsgerichtsbarkeit zur Konfliktlösung zwischen Bürgern und Verwaltung in Zeiten der europäischen Integration und globaler Unsicherheit.

Insgesamt vier Beiträge beschäftigen sich mit der Justizentwicklung und der Rechtsprechung in Russland. *Otto Luchterhandt* und *Ilya Levin* widmen ihre Beiträge bestimmten Aspekten der Judikatur des Russischen Verfassungsgerichts. Als ein Markenzeichen der **zu** politischen Rechtsprechungspraxis bezeichnet *Luchterhandt* die vielschichtige Nivellierung in der Rechtsprechung, die den wahren Gehalt von Verfassungsnormen negiert. In seiner pointierten und beispielreichen Darstellung weist er nach, dass das Gericht seine zugewiesene Rolle kaum wahrnimmt und in der Regel zu Gunsten der politischen Opportunität entscheidet. Freundlicher geht *Levin* mit dem Russischen Verfassungsgericht um, wenn er die Praxis der Rechtsvergleichung in der Judikatur untersucht. Auch wenn diese vielschichtig ist und zuweilen der Rechtfertigung der eigenen Begründungen diene bzw. diese anreichere, sieht er das Gericht zusammenfassend als Teil der internationalen „Verfassungscommunity".

Mit dem Gerichtssystem in Russland beschäftigen sich zwei Beiträge. *Elena Gricenko* untersucht das Gerichtssystem primär unter dem Gesichtspunkt der Verwaltungsgerichtsbarkeit. Dabei führt sie uns in den Dschungel der teils parallelen und wenig sachgerechten Abgrenzungen der Verfahrensarten und der Zuständigkeiten in den unterschiedlichen Prozessgesetzen. Es gäbe zwar ein neues Verwaltungsgerichsverfahrensgesetzbuch in Russland, jedoch habe sich im Ergebnis auch bei den Reformen die rückwärtsgewandte zivilprozessuale Ansicht durchgesetzt, was zu dem abstrusen Ergebnis führt, dass es zwar ein Verwaltungsgerichtsverfahren gäbe, dieses jedoch an den ordentlichen Gerichten ablaufe. Ohne eine eigen-

ständige Verwaltungsgerichtsbarkeit müsse Russland wohl noch länger auf einen wirksamen Verwaltungsgerichtsschutz warten. Der Beitrag von *Vladimir Yarkov* stellt die seit Jahren umstrittenste Reform in der russischen Justiz, nämlich die Abschaffung des russischen Obersten Arbitragegerichts und die Übertragung seiner Funktionen auf das Oberste Gericht der ordentlichen Gerichtsbarkeit, dar. Das Ziel, das der Gesetzgeber nach den Gesetzesmaterialien mit der Reform verfolgte, nämlich die Vereinheitlichung der Rechtsprechung, hätte mit bedeutend geringeren Eingriffen erreicht werden können. Nach der Reform steht in Wirtschaftsstreitigkeiten ein Instanzenzug von insgesamt zwei Tatsacheninstanzen und drei (!) Instanzen zur Überprüfung von Entscheidungen auf Rechtsfehler offen, von denen allerdings die letzte, nämlich das Aufsichtsverfahren vor dem Obersten Gericht, von einer Annahme durch das Oberste Gericht abhängig ist. Der Rechtsschutz in Wirtschaftssachen und die Rechtssicherheit werden darunter wohl eher leiden eine Verbesserung des Rechtsschutzes gehörte indes auch nicht zu den erklärten Zielen der Reform. *Yarkov* kommt nach einer kurzen Analyse weiterer Probleme der russischen Gerichtsverfassung zu dem eher ernüchternden Ergebnis, die russische Reform sei nun erst ein Anfangsschritt, dem weitere folgen müssten, um zu einem sinnvollen Gesamtergebnis zu gelangen.

Die beiden abschließenden Beiträge beschäftigen sich mit der Verfassungsgerichtbarkeit in Ungarn und in Polen. *Eszter Bodnár* untersucht in ihrem Beitrag über das ungarische Verfassungsgericht die Schwierigkeiten, mit denen das Gericht in den vergangenen Jahren konfrontiert war. Indem sie auch die Verfassungsentwicklung in den Blick nimmt, wird ein politischer Prozess in seinem ganzen Ausmaß sichtbar, der offensichtlich auf eine Entmachtung des ungarischen Verfassungsgerichts, das in der politischen Wendezeit eine Schlüsselrolle gespielt hat, ausgerichtet ist, auch wenn das Gericht, das sich mit Kraft dem Prozess entgegengestemmt hat, nicht abgeschafft wurde. Allerdings schlussfolgert sie, dass dann, wenn die nationalen Kontrollinstitutionen geschwächt sind, die internationalen und besonders die europäischen Institutionen gefragt sind. Mit der Rolle des polnischen Verfassungsgerichts bei der Feststellung der Unfähigkeit des Präsidenten zur Ausübung des Amtes beschäftigt sich der Beitrag von *Grzegorz Pastuszko.* Dies verknüpft er mit Vorschlägen de lege ferenda, um die Rolle des Verfassungsgerichts in diesem Bereich gegenüber dem Parlament zu stärken. Natürlich ist es eine andere Frage, ob sich das polnische Verfassungsgericht tatsächlich vor dem Hintergrund des Systemwandels in Polen gegen Präsident und Parlament durchsetzen könnte.

Die Tagung, der die Beiträge dieses Buches entstammen, wurde durch die Deutsche Forschungsgemeinschaft (Förderlinie Jahrestagungen wissenschaftlicher Fachgesellschaften) und die Deutsche Gesellschaft für Osteuropakunde finanziell gefördert.

Berlin, im Juni 2017 Oesten Baller und Burkhard Breig

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Comparative Analysis of Lustration in the Judiciary: Theoretical and Practical Aspects

Shimon Shetreet

I. Introduction

The question of lustration in the Judiciary in a situation of a basic change in a regime raises central issues regarding the independence and accountability of the Judiciary. In this paper this lustration is analysed in a comparative perspective. This issue was raised particularly in the transition of governments from communist rule to democratic governments. But the theoretical issues have arisen in other contexts as well. Thus the issue was debated in cases involving introduction of reductions in retirement age or in situations of structural court reform, which require the closing of courts and the transfer of judges from one geographical area to another. This paper will give special attention to the recent lustration legislation in Ukraine. It will analyse the law in view of the accepted theoretical principles of Judicial Independence and International Standards of Judicial Independence.

The opening section offers a background of the law in the Ukrainian society, and the issues that arise as a result of its legislation. Later, lustration legislation will be examined in light of the Mt Scopus International Standards of Judicial Independence and in light of the importance of securing judicial independence when carrying out any act of lustration. In order to put the issue in a broader context, the paper will analyse examples of different forms of lustration from around the world including the challenge of building a culture of judicial independence in post-communist Russia, as well as the case of Baka vs. Hungary. This paper will explain the lessons we can learn from England and the Judicial Pensions Act of 1959, as well as bring the example of the system of lustration used in the United States of America. I will also present controversial cases of lustration from the formative years of the State of Israel at the end of the British Mandate and the establishment of the State of Israel.

II. Ukraine Law on the Restoration of Trust in the Judiciary

The *Ukraine law on the restoration of trust in the judiciary* entered into force in April 2014. It was enacted as an attempt to ensure the accountability of judges in Ukraine, who demonstrated ungracious violations of human rights under the previous regime of President Yanukovych. During Yanukovych's reign as President of Ukraine courts were often used as tools for increasing his own power and punishing political opponents. This led to a great perception of corruption in the courts, leav-

ing the people of Ukraine with a very low trust in the courts. The rationale behind this law is to remove the judges who have violated Ukrainians' civil and political rights, by serving the regime rather than the constitution.[1] The law provides for the establishment of a special Ad Hoc Commission for the Screening of Judges. This screening will be applied to judges who made during Yanokovych's presidency one of a range of decisions, including restricting meetings, rallies and marches during the protest period from November 2013 February 2014, or that concerned parliamentary elections and resulted in violations of electoral law or could have had an effect of the outcome in several electoral districts. Judges would also be subject to lustration review if European Court of Human Rights judgements had challenged their past decisions.

According to the law, this screening process is to be conducted by a lustration committee; a screening ad hoc commission, made up of five members of the Supreme Court of Ukraine, five members of the parliament and five members of the government commission for anti-corruption policy.

The Screening Ad Hoc Commission will investigate and submit its recommendations for dismissal of judges from their offices based on their breaches of the oath to the High Council of Justice, who is authorized to recommend to the President of Ukraine.[2]

Since the law has come into effect, all presidents of courts and their deputies as well as secretaries of court chambers have been dismissed from their offices. From now on, new court presidents will be elected to their position for the term of one year by secret ballot from among the judges of the corresponding court. The law allows only a one year term form an administrative position, as opposed to how it was previously done with a five year term. In addition, the law states that one cannot be elected to an administrative position more than twice consecutively.[3]

It is important to note that the law does not restrict court presidents, their deputies, or secretaries of court chambers to regain their positions. At the same time, however, such a restriction concerned the members of the High Court of Justice and High Qualification Commission of Judges in Ukraine. The law terminated their offices and prohibited the membership in the High Court of Justice and High Qual-

1 *Maria Popova*, Ukraine's Legal Problems, 15 April 2014, available at <http://www.hrw.org/news/2014/04/09/ukraine new law violates judicial independence>, acces sed: 1 November 2014.

2 Project on Strengthening the independence, efficiency and professionalism of the judiciary in Ukraine, Legal Opinion, available at <http://www.coe.int/t/dghl/coope ration/capacitybuilding/Source/judic reform/agenda%20wshop%20disc%2020% 20may%20eng.pdf>, accessed: 1 November 2014.

3 Op. cit. (note 2).

ification Commission of Judges to previous members of the respective bodies before the law became effective.[4]

Although the law has been effective in securing its desired accomplishments, some issues arise as to the legality of the screening process of judges. It is understandable that people in Ukraine, upon the change in government, want to ensure that the judiciary is not complicit in corruption and human rights violations.

It has however been claimed that the this new law that has been adopted, with the aim of restoring the confidence of the people in the judiciary, is tainted with political bias and actually goes so far as to violate the independence of the judiciary, which only deepens the mistrust of the people of Ukraine in the judiciary.[5] It has been claimed by the Human Rights Watch that the screening Ad-hoc commission, with a majority of members appointed by the government and the parliament politicizes the commission, and that the law lacks adequate guarantees of independence of the commission's members and of due process for anyone who appears before it.[6] The Human Rights watch claims that the law is overly broad and vague, and sets the scene for a mass political exclusion of anyone who held "positions of authority" during the previous Yanukovych presidency.

However, the positive effects of lustration, purging the judiciary of judges who have in the past made extreme violations of Ukrainian human rights, have been thought of as only short term, while in the long term these so called benefits are likely to become liabilities. The law that gives the authority to terminate official offices of judges only reminds the judiciary that they can be punished for delivering rulings that are deemed as politically objectionable or unnacceptable. Lustration could harm the judicial independence in Ukraine. Research in Latin America has shown that when judicial tenure is not guaranteed, and that each new government rids the judiciary of its members after coming into power, judicial independence tends to stay low under democratic and authoritarian governments alike.[7]

4 Op. cit. (note 2).

5 Europe and Central Asia director at Human Rights Watch Ukraine: New Law Violates Judicial Independence, April 10, 2014, available at <http://www.hrw.org/news/2014/04/09/ukraine new law violates judicial independence>, accessed: 1 November 2014.

6 Op. cit. (note 5).

7 Op. cit. (note 5).

III. The Theoretical Foundation of Judicial Independence: The Six Principles of Constitutional Protection of Judicial Independence

I wish to present the theoretical foundations of Judicial Independence. There are six principles of constitutional protection of Judicial Independence. The first principle is the separation between the Judiciary and the Executive, meaning that judges must not be part of the administrative arm of the Executive branch of the government. The second principle is the prohibition of the diversion of cases from ordinary courts. The third principle is post-decisional independence of the judgment and its respect by the other branches of government. The fourth principle requires that cases be heard by judges according to an internally predetermined plan or schedule prior to commencement of the case. The sixth principle is that changes in the terms of judicial office should not be applied to presently sitting judges unless such changes serve to improve the terms of judicial service.[8]

These six principles must be followed when deciding who will be a part of the judiciary to allow the maximum level of judicial independence. The Mt Scopus Standards of Judicial Independence explain why an independent judiciary is so important for a society.

Article 1.1 of the Mt Scopus International Standards of Judicial Independence states that an independent and impartial judiciary is an institution of the highest value in every society. It is an essential pillar of liberty and the rule of law. Article 1.4 adds an important foundation to the idea of Judicial Independence. It defines that the political leaders and the professional elite as well as the branches of governments must create a culture of Judicial Independence which is based on a number of essential elements; creating institutional structure, establishing constitutional infrastructures, introducing legislative provisions and constitutional safeguards, creating adjudicative arrangements and jurisprudence, and maintaining ethical traditions and code of judicial conduct.[9]

The culture of judicial independence in every jurisdiction is based on a number of levels: the institutional level, which regulates the matters relative to status of the

8 For a detailed analysis of the six principles of Constitutional Protection, please see: *Shimon Shetreet*, The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of international law, 275 332 (2009). See also *Shimon Shetreet*, Chapter two; Judicial Independence, Liberty, Democracy and International Economy, Shimon Shetreet (ed.), Culture of Judicial Independence; Rule of Law and World Peace, 11 39 (Brill Nijhoff 2014).

9 *Shimon Shetreet* (ed.), Culture of Judicial Independence; Rule of Law and World Peace, Appendix I, Mt Scopus International Standards of Judicial Independence, Volume 3, at 368.

judges and jurisdiction of the courts, and the constitutional level, which embodies in a constitution the institutional aspects and insures that the independence of the judiciary shall not be adversely affected by legislation or by executive action. An additional level, the legislative level, which regulates in detail the constitutional principles, and lastly the adjudicative level, which is the jurisprudence of the courts, provides for interpretation and additional elements in all the levels. From the review of the court decisions on the matter of judicial independence, it is possible to conclude the substantive elements that each country is providing for the rules to create culture of judicial independence and maintaining this culture. The emphasis on fostering a culture of judicial independence was recognized by the added paragraph 1.4 to the Mt. Scopus International Standards of Judicial Independence approved at the international conference of the JIWP Association at the University of Ghent in October 2012. This paragraph reads:

> "Every society and all international bodies, tribunals and courts shall endeavour to build and maintain a culture of judicial independence that is essential for democracy, liberty, rule of law and human rights in domestic system of government and is a neces sary foundation for world peace, orderly world trade, globalized markets and beneficial international investments."

IV. The Challenge of Building a Culture of Judicial Independence in Post-Communist Russia

The importance of ensuring judicial independence is part of the Constitution of the Russian Federation; judges are independent and are only subordinate to the Constitution of the Russian Federation and federal law. The Federal Law on the Status of Judges in the Russian Federation establishes the guarantee of judicial independence.[10] The question arises, what does Judicial Independence mean according to the Russian constitution? Sergey Nikitin states that it means that a judge should not participate in proceedings when there are questions of partiality or potential partiality. Objective circumstances that exclude the possibility of a judge participating in a case have been put in place to ensure that judges will be impartial in adjudication. For example, if the previous participation of a judge in a case as a lawyer, prosecutor, expert, witness; if the previous participation of a judge in considering a specific case in other judicial instances as well as in other arbitration courts; if there are family ties of the judge to any of the participants in a process; if a judge being currently under or previously under the service of or otherwise dependent on one of the parties participating in a case. Other circumstances of the direct or indirect interest

10 *Sergey Nikitin*, Chapter twenty eight; Appointment of judges and legal responsibility of judges: guarantees of independence in Russia, Shimon Shetreet (ed.), Culture of Judicial Independence; Rule of Law and World Peace, Volume 3, at 319.

of a judge in a case, or grounds for doubting the impartiality of a judge, may also be implemented in procedural law and judicial precedent. In addition, it is possible to consider whether a judge has previously spoken publicly or commented on the substance of a case being considered.[11]

Russian procedural legislation even directly states the principle of judicial independence: Judges are independent when carrying out justice, and they answer only to the Constitution of the Russian Federation and federal law. Any outside interference of judges, interference in their work for state bodies, self-governing bodies or other bodies, organizations, administrative officials or citizens is forbidden and may be prosecuted under the established law.[12]

The real independence of judges is guaranteed by various means: legal, economic and administrative, etc. First, a judge must be protected from illegal external influence: the executive branch, business, unscrupulous lawyers and others. Second, they must be protected from the undue influence of judges within the judicial system, for example, from managers, court administrators or higher courts.[13]

According to Professor Sergey Nitikin, these means of securing judicial independence have to be very concrete and specific, both in a legislative and in a practical sense. Legislation should include precise, executable and protected enforceable rules that guarantee the independence of judges and courts. Their implementation should not allow even an appearance of distortion to judicial independence. Judicial independence must not be simulated.[14]

On the topic of judicial independence in the Russian Federation, Professor Dmitry Maleshin states that there are different components of judicial independence: political, economic and administrative. Political guarantees mean that judges cannot be members of any political party. High salaries for judges are the result of economic guarantees. Administrative guarantees ban any pressure on judges. The judiciary must be separate from the other branches of government.[15]

For the last twenty years, Russia has undertaken significant efforts to ensure implementation of standards of court independence. Meanwhile, there are known cas-

11 *Sergey Nikitin,* Chapter fifteen; Procedural Guarantees of Independence and Impar tiality of Judges in Russia, Shimon Shetreet (ed.), Culture of Judicial Independence; Rule of Law and World Peace, Volume 3, at 174.

12 *Nikitin,* op. cit. (note 11), at 178.

13 *Sergey Nikitin*, Chapter twenty eight; Appointment of Judges and Legal Responsibility of Judges: Guarantees of Independence in Russia, in: Shimon Shetreet (ed.), Culture of Judicial Independence; Rule of Law and World Peace, at 319.

14 *Nikitin,* op. cit. (note 13), 319.

15 *Dmitry Maleshin*, Chapter twenty six; Culture and Judicial Independence in Civil Procedure, Shimon Shetreet (ed.), Culture of Judicial Independence; Rule of Law and World Peace, Volume 3, at 303.

es when foreign courts and arbitration courts were chosen for resolution of cases of clearly Russian origin that demonstrate that Russian lawyers shall complete significant work to ensure implementation of court independence standards.[16]

An example of the problematic issue of lustration can be found in the Russian experience in the Zorkin-Yeltsin affair. After the collapse of the Soviet Union, the constitutional court was led by Chief Justice Valery Zorkin in several cases involving the transition of rule from the Soviet to the post-Soviet era. These cases were controversial, and included both an invalidation of one of President Yeltsin's decrees and a finding that Yeltsin's actions were unconstitutional. In response to these and other decisions, Yeltsin shut down the constitutional court for several years. When it reopened, Valery Zorkin remained with the court. However, the court's perspective was notably different after its reopening.[17]

V. The Case of Hungary

Another parallel can be brought from the case of Baka vs. Hungary.[18] In that particular case, there was a proposal to reduce the mandatory retirement age of the judiciary from the age of 70 to the age of 62. This proposal came about after the alliance of Fidesz Magyar Polgári Szövetség and the Christian Democratic People's Party obtained a two-thirds parliamentary majority in Hungary and undertook a programme of comprehensive constitutional reform in April 2010. Baka was the President of the Supreme Court of Hungary at the time. He claimed that the mandatory retirement age being brought back by eight years, to be applied to present, and future judges, would cause the immediate termination of hundreds of judges. The administration of courts would be seriously hindered since the replacement of many retiring judges is extremely difficult. He claimed that the proposal is unfair and humiliating with respect to the persons concerned, who took an oath to serve the Republic of Hungary and to administer justice and who devoted their life to the judicial vocation, with many years of experience and practice. He claimed most strongly though, that the move to change the retirement age is the result of political motivation, used by the new regime to appoint new judges that they believe are more politically aligned with them.[19]

16 *Dmitry Magonya*, Chapter eighteen, Independence of Court Proceedings: Impartiality and Fairness, Shimon Shetreet (ed.), Culture of Judicial Independence; Rule of Law and World Peace, Volume 3, at 213.

17 *Shimon Shetreet*, The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of International Law, 275 332 (2009), at 24.

18 European Court of Human Rights, Case of Baka v. Hungary, 20261/12.

19 Op. cit. (note 18), paragraph 14.